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Attorneys for Third Party Witness
Gary Tinterow

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

LUKE D. BRUGNARA,

Defendant.

Case No.: 3:14-CR-00306-WHA-1

**GARY TINTEROW'S MOTION TO QUASH
SUBPOENA**

**[Proposed] Hearing Date: 4/28/15
Time: 2:30 p.m.**

I. INTRODUCTION

Pursuant to Federal Rule of Criminal Procedure 17, Non-Party Gary Tinterow ("Mr. Tinterow") hereby moves to quash the Subpoena to Testify in a Criminal Case (the "Subpoena") served on Mr. Tinterow. (A copy of the Subpoena is attached as Exhibit A). Mr. Tinterow is Director of the Museum of Fine Arts, Houston ("MFAH") and works and lives in Houston, Texas. Mr. Tinterow is not a party to this case. As Mr. Tinterow understands that the Court has set a hearing for Tuesday, April 28, at 2:30 p.m. to hear other motions to quash similar third-party subpoenas, Mr. Tinterow respectfully requests that this motion be heard at that time as well.

On April 21, 2015, a deputy United States Marshal for the Southern District of Texas served the Subpoena on Mr. Tinterow in Houston, Texas. The Subpoena requires him to appear and give

1 testimony before this Court on Monday, April 27, 2015. The Subpoena requests that Tinterow
 2 “testify that ‘Valsuani’ Little Dancer is not [an] original Degas, but rather cast in 1997/1998 from a
 3 plaster created by a copyist; and that originals are in museums.” *Id.* The Subpoena further states, in
 4 parentheses, “Sotheby states ‘NSV’ [no significant value] = decorative art piece[.]”

5
 6 As Mr. Tinterow has no knowledge of any of the facts giving rise to this case, Defendant
 7 Luke Brugnara (“Defendant”) presumably seeks Mr. Tinterow’s testimony as an expert who might
 8 testify concerning the authenticity of a work alleged to be that of Nineteenth Century French Sculptor
 9 Edgar Degas. Mr. Tinterow moves to Quash the Subpoena because compliance with it would be
 10 unreasonable and oppressive, and most importantly, Mr. Tinterow has no personal knowledge of the
 11 facts giving rise to this case, and does not otherwise appear able to offer testimony of any value to the
 12 trier of fact.

13 14 **II. ARGUMENT**

15 The Federal Rules of Criminal Procedure provide that upon a “motion made promptly, the
 16 court may quash or modify the subpoena if compliance would be unreasonable or oppressive.” FED.
 17 R. CRIM. P. 17(c)(2). *See also United States v. Collins*, 2013 WL 1089908, at *2 (N.D. Cal. 2013)
 18 (“Enforcing or quashing Rule 17(c) subpoenas is within the discretion of the trial judge and will not
 19 be disturbed unless arbitrary or without support in the record.”) (quoting *United States v. Reed*, 726
 20 F.2d 570, 577 (9th Cir. 1984)). The Court should quash the subpoena of Mr. Tinterow because
 21 ordering Mr. Tinterow to appear in this case would be unreasonable and oppressive due to the late
 22 notice given to Mr. Tinterow, Mr. Tinterow’s lack of any personal knowledge relevant to this case,
 23 and Mr. Tinterow’s busy fundraising and travel schedule.

24
 25 Mr. Tinterow first received notice of the Subpoena and of this case when he was served by
 26 hand on April 21, 2015, despite the fact that the Subpoena had been issued two weeks earlier on April
 27 7, 2015. The Subpoena gives Mr. Tinterow only six days’ notice of the date on which he is to appear
 28

1 to testify in San Francisco, California. No attempt was made to give Mr. Tinterow advance notice of
2 the intent to call him as a witness or to try to work with his schedule. Furthermore, appearing at trial
3 for an indefinite period of time would be especially onerous given Mr. Tinterow's schedule, which
4 includes domestic and international travel, including a longstanding family vacation from Friday,
5 April 24 through Monday, April 27, long-scheduled trips to New York and Italy for museum business
6 from Friday, May 1 through Friday, May 8, as well as meetings with persons traveling to Houston on
7 Tuesday, April 28 and Thursday, April 30, 2015. In addition to his travel and meeting obligations,
8 Mr. Tinterow is hosting and serving as a juror in a juried art show and festival that opens on
9 Wednesday, April 29, 2015. The wholesale disruption of Mr. Tinterow's business as the director of
10 one of the nation's largest museums is unwarranted, particularly given his complete inability to offer
11 admissible evidence in this case, as explained below.
12

13
14 Most significantly, requiring Mr. Tinterow's compliance with this Subpoena would be
15 unreasonable because his testimony would appear to be inadmissible due to his lack of any personal
16 knowledge of the relevant facts and the apparent unavailability of the sculpture about which he has
17 been subpoenaed to testify. While Mr. Tinterow is known to have stated that the so-called "Valsuani
18 Degas" sculptures should not be considered authentic works of Edgar Degas, he has no personal
19 knowledge of the particular sculpture at issue in this case, whether it is or is not a Valsuani Degas,
20 and thus would be completely inappropriate as a fact witness in this case. *See* FED. R. EVID. 602
21 (requiring a witness to possess personal knowledge of a matter to testify). Because an expert
22 evaluation of a particular work of art's authenticity or value generally requires a personal inspection,
23 the unavailability of the sculpture at issue would preclude Mr. Tinterow giving any opinion about its
24 provenance. *See* FED. R. EVID. 702 (limiting opinion testimony of expert witnesses to opinions based
25 on "sufficient facts or data"); *see also* FED. R. EVID. 703 (limiting the basis of an expert opinion to
26 facts or data that may be "perceived or made known to the expert at or before the hearing").
27
28

1 It also appears that any purported "expert" testimony of Mr. Tinterow regarding the sculpture
2 would not be relevant to the issues in this case, at least as those issues are reflected in the indictment
3 and complaint. As Mr. Tinterow is charged with falsely promising to pay several million dollars for
4 several pieces of art, it would not appear that the alleged "true" value of one of those pieces of art
5 would have any bearing on whether Mr. Tinterow made such a false promise. This is particularly
6 true where there is no evidence to indicate that Mr. Tinterow ever communicated any information
7 about the Degas sculpture to anyone involved in this case.
8

9 III. CONCLUSION

10 For the foregoing reasons, Mr. Tinterow respectfully requests that this Court quash the
11 Subpoena.
12

13
14 Dated: April 23, 2015

Respectfully submitted,

15
16 *Of Counsel:*

By:  _____

Jason P. Gonzalez

ATTORNEYS FOR GARY TINTEROW,

DIRECTOR, MUSEUM OF FINE ARTS, HOUSTON

17 **James Edward Maloney**

Pro Hac Vice Motion Pending

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Pro Hac Vice Motion Pending

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Houston, Texas 77002

24 713-220-4200

25 Fax: 713-238-7246
26
27
28

EXHIBIT A

CAND 89A (Rev. 8/12) Subpoena to Testify in a Criminal Case

14-CR-00306

#8

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

SUBPOENA TO TESTIFY
IN A CRIMINAL CASE

Case No.: CR-14-0306WHA

v.

LUKE BRUGNARA Defendant(s).

TO: GARY TINEROW, DIRECTOR, HOUSTON MUSEUM FINE ART
1001 Bissonnet, Houston, TX 77005

YOU ARE COMMANDED to appear at the place, date, and time specified below, or any subsequent date and time set by the court, to testify in the above-referenced case. This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

PLACE

<input checked="" type="checkbox"/> United States Courthouse 450 Golden Gate Avenue San Francisco, CA 94102	<input type="checkbox"/> United States Courthouse 280 South First Street San Jose, CA 95113	<input type="checkbox"/> United States Courthouse 1301 Clay Street Oakland, CA 94612
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COURTROOM/JUDGE

8 / ALSUP

DATE AND TIME

APRIL 27, 2015

☐ You are also commanded to bring with you the following document(s) or object(s):GARY, TO TESTIFY THAT "UALSUANI" LITTLE DANCER IS NOT
ORIGINAL DEGAS, BUT RATHER CAST IN 1997/1998 FROM A
PLASTER CREATED BY A COPYIST; AND THAT ORIGINALS ARE IN MUSEUMS. R3OR AS DIRECTED
BY THE COURT
(415) 522-2020
CLERKNOTE: Subpoena forms for the production of documents or objects at or in advance of the trial, hearing or proceeding at which the items are to be offered in evidence (CAND 89B, Subpoena to Produce Documents or Objects in a Criminal Case) or for the production of state law enforcement personnel or complaint records (CAND 89C, Subpoena to Produce State Law Enforcement Personnel Or Complaint Records in a Criminal Case) are available at the Court's Internet site: cand.uscourts.gov.

U.S. MAGISTRATE JUDGE OR CLERK OF COURT

RICHARD W. WIEKING

DATE

APR - 7 2015

(By) Deputy Clerk

DAWN K. TOLAND

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER:

RECEIVED
UNITED STATES MARSHAL
15 APR 14 PM 3:14
SOUTHERN DIST. S/ASSTSHORT
TESTIMONY
(SOUTHERN STATES)
"NSV" DECORATIVE
ART PIECE

CAND 89A (Rev. 5/12) Subpoena to Testify in a Criminal Case

PROOF OF SERVICE		
RECEIVED BY SERVER	DATE	PLACE
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		FEE AND MILEAGE TENDERED TO WITNESS <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$
SERVED BY (PRINT NAME)		TITLE
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.		
Executed on _____ DATE		SIGNATURE OF SERVER ADDRESS:
ADDITIONAL INFORMATION		

ORIGINAL
FILED

APR - 7 2015

IN THE UNITED STATES DISTRICT COURT

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 14-00306 WHA

v.

LUKE D. BRUGNARA,

**ORDER RE DEFENDANT'S
RULE 17 SUBPOENAS**

Defendant.

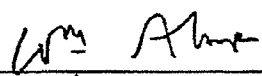
/

Defendant Luke Brugnara has filed applications for the issuance of several Rule 17 subpoenas to testify at trial. Defendant's requests are **GRANTED** for the following witnesses, without prejudice to a motion to quash: Jameth Record, Brenda McCoy, Patricia Failing, Gary Tinnerow, Mary Beecroft, Mark Levinson, Troy Carasco, Jennifer Biederback, Si Newhouse, Jack Shaoul, Joan Michelman, Nick Barbato, Doug Johnson, Frank Sanders, and Tony Crossley. The Marshal shall serve the subpoenas on these witnesses as if on behalf of the government pursuant to FRCP 17(b).

Defendant has also filed a request for the issuance of a subpoena for documents to John MacWhinnie. That request is **GRANTED**, without prejudice to a motion for a protective order. The Marshal shall serve this subpoena as if on behalf of the government pursuant to FRCP 17(b).

IT IS SO ORDERED.

Dated: April 7, 2015.


WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

Carpenter, Jennifer

Full Name: Jeremy Desor
Last Name: Desor
First Name: Jeremy
Job Title: Special Agent
Company: Federal Bureau of Investigation

Mobile: (415) 238-9857

Luke Brugnara Case - Degas

CERTIFICATE OF SERVICE*United States of America v. Luke Brugnara*

CR 14-00306 WHA

The undersigned hereby certifies that she is an employee of the law firm Nixon Peabody LLP, located at 555 West Fifth Street, 46th Floor, Los Angeles, California 90013, and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on this 23rd day of April, 2015, she is causing a true and correct copy of the following:

1. GARY TINTEROW'S MOTION TO QUASH SUBPOENA**2. ORDER ON GARY TINTEROW'S MOTION TO QUASH SUBPOENA**

to be served this date upon the person indicated below at the address shown:

**Luke D. Brugnara – ULQ905
The Glenn E. Dyer Detention Facility
550 – 6th Street
Oakland, CA 94607**

X : By First-Class Mail — I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service on the same day as collected, with first-class postage thereon fully prepaid, in Los Angeles, California, for mailing to the office of the addressee following ordinary business practices.

___ : By Personal Service — I caused each such envelope to be given to a courier messenger to personally deliver to the office of the addressee.

___ : By Overnight Courier — I caused each such envelope to be given to an overnight mail service at Los Angeles, California, to be hand delivered to the office of the addressee on the next business day.

___ : By Facsimile — Facsimile transmission to the parties and numbers listed below. The facsimile machine I used complied with the provisions of Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this Declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed April 23, 2015 at Los Angeles, California.


Corinne Ubence